



FREDERICK COUNTY PLANNING COMMISSION

January 8, 2020

TITLE: **Omega Center Lots 9A, 9B and 9C**

FILE NUMBER: **S-774, AP 19866, APFO 19864**

REQUEST: **Combined Preliminary/Final Plat Approval**

The Applicant is requesting approval to subdivide a 4.65 acre property into three lots; 9A - 1.19 ac., 9B - 1.99 ac. and 9C - 1.28 ac. in a major subdivision.

PROJECT INFORMATION:

LOCATION: Intersection of Route 85 and Executive Way
ZONE: Limited Industrial (LI)
REGION: Frederick
WATER/SEWER: W-1, S-1
COMP. PLAN/LAND USE: Limited Industrial (LI)

APPLICANT/REPRESENTATIVES:

APPLICANT: Buckeystown Properties
OWNER: Buckeystown Properties
ENGINEER: Harris Smariga & Associates, Inc.

STAFF: Jerry Muir, Principal Planner I

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

Exhibit 1 - Combined Preliminary/Final Plat
Exhibit 2 - Letter of Understanding

STAFF REPORT

ISSUE

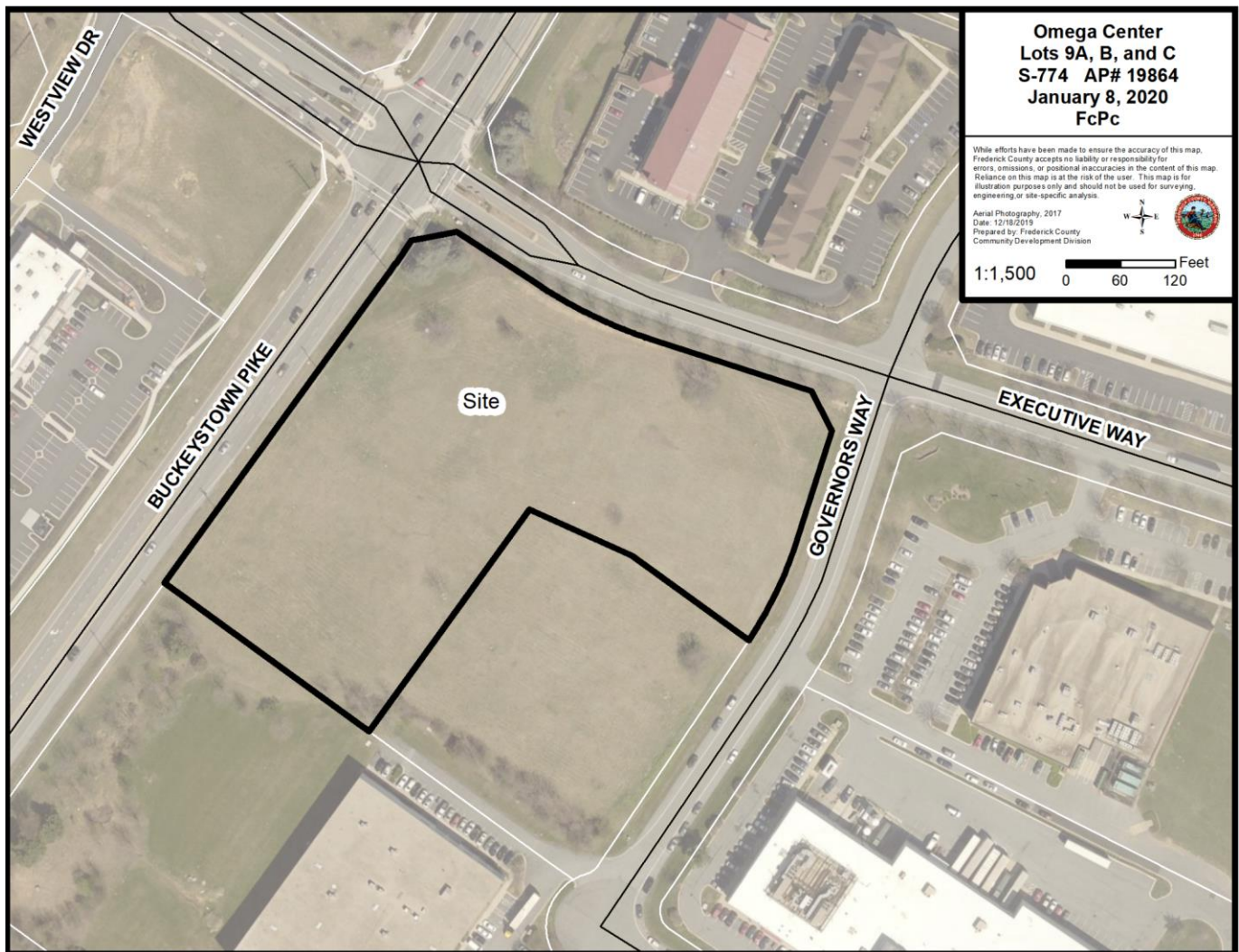
The Applicant is requesting combined preliminary/final plat approval to subdivide a 4.65 acre property into three separate lots.

BACKGROUND

This property is part of the larger Omega Center subdivision and was originally recorded in 2001.

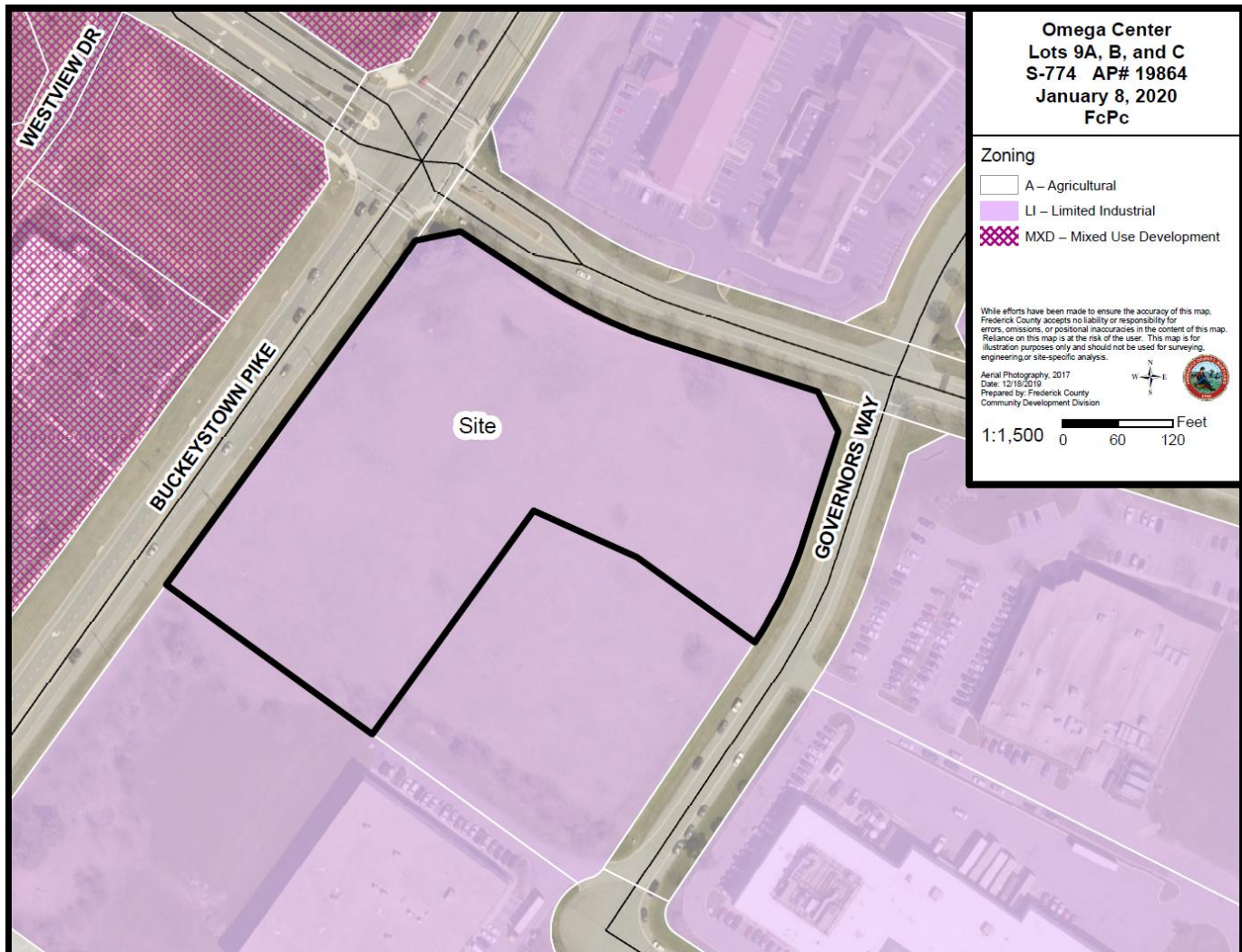
- In 2019, an addition plat was submitted and approved to add .18 acres from Lot 9 to Lot 8B in order to accommodate the development of a hotel on Lot 8B.

Major subdivisions require review and approval by the Planning Commission.



Existing Site Characteristics

The unimproved property is largely devoid of significant vegetation and generally slopes to the south west.



ANALYSIS

A. ZONING ORDINANCE REQUIREMENTS

1. ***District Regulations, Design Requirements For Specific Districts §1-19-6.100:***

Limited Industrial LI: 25' front yard, 20' rear yards, and side yards equal to height of the structure. Maximum height is 60'. Minimum lot size is 20,000 SF.

The proposed lots meet the minimum lot size requirement. The required front, rear, and side setbacks are shown and noted on the plan and meet the Zoning Ordinance requirements.

The plat is proposing 20' side yard setbacks, which would restrict the height of future structures to 20'. Staff recommends that the Applicant revise the Minimum Building Restriction Lines block on the plat to read "The side yard setback is 20' or equal to the height of future structures, whichever is greater".

Zoning Ordinance Requirements Findings/Conclusions

The proposed subdivision will meet all Zoning Ordinance requirements.

B. SUBDIVISION REGULATION REQUIREMENTS

1. ***Land Requirements §1-16-217 (A):*** *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The subject property has Limited Industrial (LI) zoning. The proposed lots are situated adjacent to properties that have been developed with industrial and commercial uses. The proposed land use and subdivision design complies with the Comprehensive Plan and will meet the district regulations of the Zoning Ordinance.

2. ***Land Requirements §1-16-217 (B):*** *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The Site does not contain steep topography, 100-year FEMA floodplain, wetlands, or streams. The proposed land use will be similar to the uses found on the adjoining properties.

3. ***Preliminary Plan, Required Information §1-16-72 (B)(19)(a & b):*** *Soil types: (a) Soils type(s) information shall be provided and appropriate boundaries shown on the plan. In the event that "wet soils" are located on or within 100 feet of a proposed residential subdivision, a soils delineation report shall be prepared by a licensed soil scientist or professional engineer registered in the State of Maryland. The soils delineation report shall be submitted for review prior to Planning Commission approval of the plan. The Division may waive this requirement if the "wet soils" are located within open space areas. (b) If residential lots are proposed within "wet soils" then a geotechnical report is required to be submitted by a professional engineer registered in the State of Maryland. A note shall be placed on the plan that all construction shall be in conformance with the geotechnical report.*

No wet soils are mapped on the property.

4. ***Road Access Requirements. Public Facilities §1-16-12 (B)(3)(b):*** *For major subdivisions; Lots must access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width.*

All lots have frontage and access to adequate roadways (MD 85, Executive Way and Governors Way). Shared access for these three lots will be provided and constructed as part of the future site plan phases. The proposed entrances are noted on the plat.

5. ***Water and Sewer Facilities. Public Facilities §1-16-12 (C):*** *The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.*

The lots will be served by public water and sewer. Water and sewer easements must be recorded and

referenced on the plat prior to lot recordation.

Subdivision Regulation Requirements Findings/Conclusions

The project will meet all Subdivision Regulation requirements once all agency comments and conditions are complied with.

C. OTHER APPLICABLE REGULATIONS

Stormwater Management – Chapter 1-15.2: Stormwater management will be provided in accordance with the Maryland SWM Act of 2007.

APFO – Chapter 1-20:

Schools: Schools are not impacted because the development of the property is a non-residential use.

Water and Sewer: Water and sewer classifications are W-1/S-1. While the public sewer and water facilities are currently adequate to serve the Project, the Developer recognizes that capacity is not guaranteed until purchased.

Roads:

A traffic impact analysis (TIA) was performed for this project by The Traffic Group, dated September 5, 2018, with an update on November 28, 2018. As proposed in the TIA, the development of the project would result in 227 am and 213 pm weekday peak hour external off-site trips.

All study area intersections performed at an acceptable level of service of LOS E or better, therefore no road improvements are required. However the Applicant needs to provide an off-site sidewalk along Governor's Way to connect the hotel with the retail uses to the north as permitted in §1-20-31(F). This sidewalk extension, which will run approximately 200' north of Executive Way to join the existing sidewalk, must be guaranteed prior to recordation of any of the three commercial lots and open for use prior to issuance of any building permit.

In full satisfaction of APFO requirements per §1-20-12(H), the Applicant is required to provide fair share contributions to existing escrow accounts that are impacted by the proposed development of the Site. The Applicant shall pay \$83,086 into County-held escrow accounts as noted in the attached LOU.

Forest Resource Ordinance – Chapter 1-21: The Applicant has submitted an exemption from the Forest Resource Ordinance (FRO) because this property was previously mitigated under AP 18847 by the purchase of forest banking credits. The property contains no forest and no specimen trees (trees 30" or greater in diameter).

Summary of Agency Comments

| <i>Other Agency or Ordinance Requirements</i> | <i>Comment</i> |
|--|-----------------------|
| <i>Development Review Engineering (DRE):</i> | Approved |
| <i>Development Review Planning:</i> | Approved |
| <i>State Highway Administration (SHA):</i> | Approved |
| <i>Div. of Utilities and Solid Waste Mgmt. (DUSWM):</i> | Approved |
| <i>Health Dept.</i> | Approved. |
| <i>Office of Life Safety</i> | N/A |
| <i>DPDR Traffic Engineering</i> | Approved |
| <i>Historic Preservation</i> | N/A |

RECOMMENDATION

If the Planning Commission conditionally approves the plat, it is valid for a period of three (3) years from the date of Planning Commission approval (January 8, 2023). APFO is approved and valid for a period of 3 years, or until January 8, 2023.

Based upon the findings and conclusions as presented in the staff report, the application meets or will meet all applicable Subdivision, Zoning, APFO, and FRO requirements. Should the Planning Commission grant approval of this application (S-622, AP 19866), Staff recommends that the following items be added as conditions to the approval:

Staff-proposed conditions of approval:

1. The Applicant shall comply with all Staff and agency comments through the completion of the plan.
2. All easements must be recorded and shown on the final plat prior to recordation.
3. Revise the Minimum Building Restriction Lines block on the plat to read "The side yard setback is 20' or equal to the height of future structures, whichever is greater"
4. The sidewalk extension, which will run approximately 200' north of Executive Way to join the existing sidewalk, must be guaranteed prior to recordation of any of the three commercial lots and open for use prior to issuance of any building permit.

PLANNING COMMISSION ACTION **MOTION TO APPROVE**

I move that the Planning Commission **APPROVE S-774 (AP 19866 and APFO 19864) with conditions** as listed in the staff report for the proposed Combined Preliminary/Final Plat approval to subdivide a 4.65 acre property into three separate lots, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.

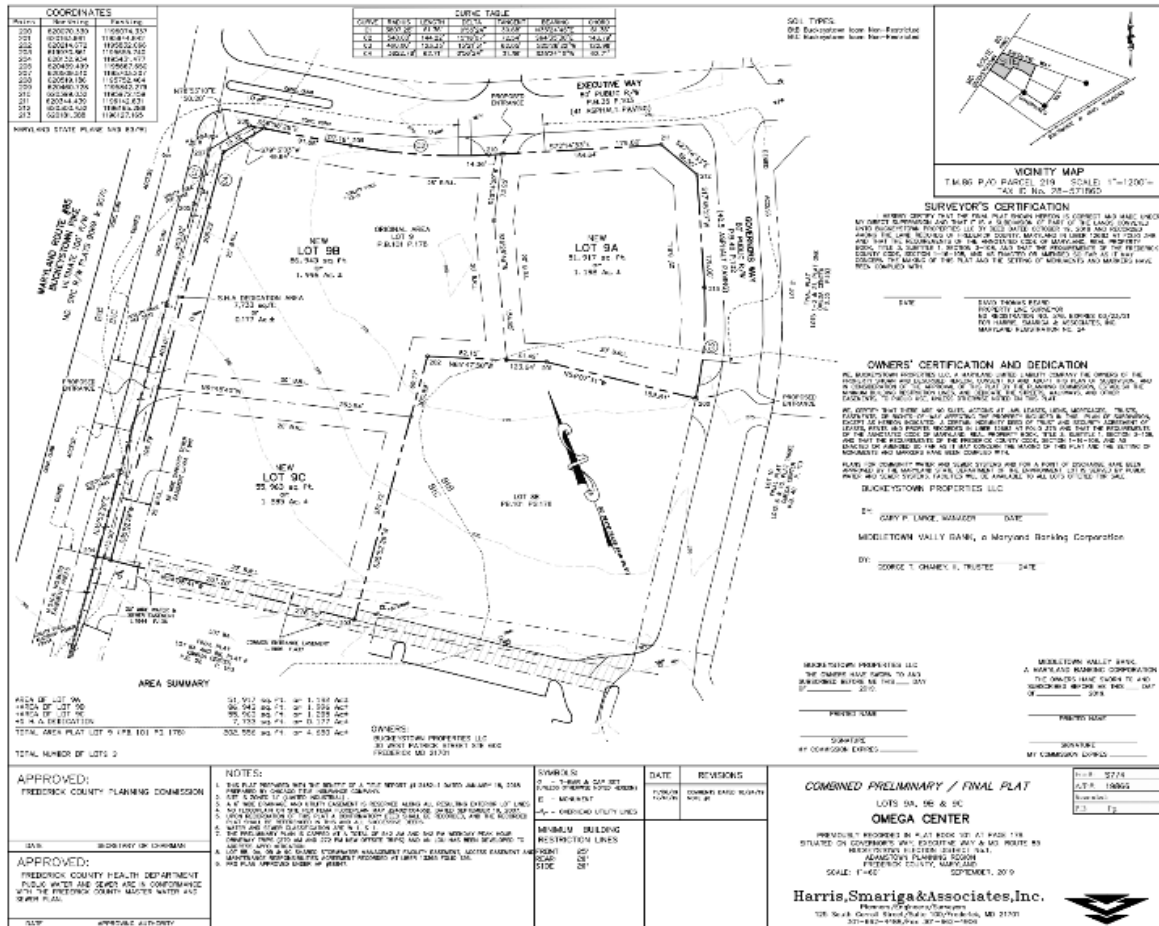


Exhibit 2 Letter of Understanding



FREDERICK COUNTY GOVERNMENT

DIVISION OF PLANNING & PERMITTING
Department of Development Review

Jan H. Gardner
County Executive

Steven C. Horn, *Division Director*
Michael L. Wilkins, *Acting Director*

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Omega Center Lots 9A, 9B & 9C

Site Plan #S-774, AP #19864

In General: The following Letter of Understanding ("**Letter**") between the Frederick County Planning Commission ("**Commission**") and Buckeystown Properties LLC (the "**Developer**"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Omega Center Lots 9A, 9B and 9C Preliminary Plan (the "**Project**"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("**APFO**").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements (or contributions to road escrow accounts, as specified below) are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's 4.65 +/- acre lot, which is zoned LI (Limited Industrial), and located in the southeast quadrant of MD 85 and Executive Way, relating to the preliminary plan for the above-referenced Project, which was conditionally approved by the Commission on January 8, 2020.

Schools: Schools are not impacted because the development of the property is a non-residential use.

Water and Sewer: Water and sewer classifications are W-1/S-1. While the public sewer and water facilities are currently adequate to serve the Project, the Developer recognizes that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that building permits will be issued. Building permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq, and all applicable county regulations.

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Road Improvements: A traffic impact analysis (TIA) was performed for this Project by The Traffic Group, dated September 5, 2018, with an update on November 28, 2018. As proposed in the TIA, the development of the Project would result in 227 am and 213 pm weekday peak hour external off-site trips. This Letter sets forth the Developer's obligations associated with the construction as depicted on the above referenced site plan; any future modification to the site plan which would have the effect of increasing the projected trip generation or a significant redistribution of site traffic would be subject to new analysis under APFO.

All study area intersections performed at an acceptable level of service of LOS E or better, therefore no roadway mitigation is required. However the Developer needs to provide an off-site sidewalk along Governor's Way to connect the hotel with the retail uses to the north as permitted in §1-20-31(F). This sidewalk extension, which would run approximately 200' north of Executive Way to join the existing sidewalk, must be guaranteed prior to recordation of any of the three commercial lots and open for use prior to issuance of any building permit.

In full satisfaction of APFO requirements per §1-20-12(H), the Developer is required to provide fair share contributions to existing escrow accounts that are impacted by the proposed development of the site. The Developer shall pay into County-held escrow accounts the following pro rata contributions:

1. Escrow Account No. 3282 for an additional northbound through lane at the intersection of Crestwood Blvd/MD 85 - The estimated cost of the improvement is \$1,733,700. The Developer's proportionate share of this Road Improvement is 2.92%. Therefore, the Developer hereby agrees to pay \$50,624 to the escrow account for this Road Improvement.
2. Escrow Account No. 3286 for a signal at intersection of English Muffin Way - The estimated cost of the improvement is \$350,000. The Developer's proportionate share of this Road Improvement is 2.63%. Therefore, the Developer hereby agrees to pay \$9,205 to the escrow account for this Road Improvement.
3. Escrow Account No. 3761 for a second eastbound left turn lane at the intersection of MD 85/English Muffin Way - The estimated cost of the improvement is \$149,545. The Developer's proportionate share of this Road Improvement is 1.16%. Therefore, the Developer hereby agrees to pay \$1,735 to the escrow account for this Road Improvement.
4. Escrow Account No. 3764 for east and west bound right turn lanes at the intersection of New Design Rd/Corporate Drive - The estimated cost of the improvement is \$837,438. The Developer's proportionate share of this Road Improvement is 2.57%. Therefore, the Developer hereby agrees to pay \$21,522 to the escrow account for this Road Improvement.

Therefore, prior to recordation of any of the commercial lots, the Developer hereby agrees to pay \$83,086 to the escrow accounts described above for these Road Improvements. Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

Period of Validity: The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on January 8, 2023.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

BUCKEYSTOWN PROPERTIES LLC

By:  Date: November 25, 2019
Gary Large, Managing Member

FREDERICK COUNTY PLANNING COMMISSION:

By: _____ Date: _____
Carole Sepe, Chair or, Samuel Tressler, Secretary

ATTEST:

By: _____ Date: _____
Gary Hessong, Director, Permits & Inspections

Planner's Initials / Date _____

County Attorney's Office Initials / Date _____
(Approved as to legal form)

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Omega Ctr. LOU